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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,401	12/12/2000	Eckhard Alt	IFD/046	4641

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 03/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/735,401

Applicant(s)  
Alt

Examiner  
Michael Thaler

Art Unit  
3731



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 61-68 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 61-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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Claims 93-100 have been renumbered as claims 61-68, respectively, since the highest numbered claim prior to the preliminary amendment was claim 60.

Claims 65-68 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no basis in the original disclosure for the limitation in claim 65, line 5 that the long diameter of the oval cross-section is generally aligned with the circumference of the tube wall. As seen in figure 5A, the struts 35-38 are not parallel to the longitudinal axis 50 of the tube. Therefore, the cross-section of each strut is not aligned with the circumference of the tube wall. Further, there is no basis in the original disclosure for the limitation in claim 65, line 5 that the long diameter of the oval cross-section is generally aligned with the length of the tube wall. The length of the tube wall extends along the longitudinal axis 50 of the tube. The long diameter of the cross-section shown in figure 5B is not aligned with the longitudinal axis 50.

Claims 61-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontaine (5,370,683) in view of Alfidi et al. (3,868,956). Note figures 10-12 of Fontaine. The Fontaine tube constitutes a single member from which the entire stent is

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fabricated, wherein all interconnections of struts are uninterrupted and free of bonds or welds (col. 6, lines 23-26). Fontiane fails to show the cross-section of the struts as oval. Making the cross-section of the Fontaine struts oval in rather than circular in order to maximize the area of contact between the stent and the wall of the vessel would have been obvious in view of the Alfidi et al. teaching that the cross-section of stent struts may be oval (figure 13D) rather than circular (figure 13 C) for this reason. As to claims 62, 63, 66 and 67 the patentability of a product may not depend on its method of manufacture.

Claims 61-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein (5,593,442) in view of Alfidi et al. (3,868,956). The Klein stent is formed from a single open ended tube (col. 6, lines 10-17). Klein fails to show the cross-section of the struts as oval. Making the cross-section of the Fontaine struts oval in order to maximize the area of contact between the stent and the wall of the vessel would have been obvious in view of the Alfidi et al. teaching that the cross-section of stent struts should be oval (figure 13D) for this reason.

Claims 61-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Alfidi et al. (3,868,956). Alfidi et al. in figures 11, 12 and 13D, show a scaffold formed from a single open ended tube (the appliance 90 is considered to be a tube since it is generally tubular) having a multiplicity of through-holes (the open

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spaces between the windings of the coil and the straight segment of the wire which extends along the longitudinal axis of the tube). As to claims 62, 63, 66 and 67 the patentability of a product may not depend on its method of manufacture.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

mht  
March 1, 2002  
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MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731